

.01 Scope.

A. This chapter establishes regulations that preserve and improve the health, comfort, and environment of the people of the State by protecting the public and employees from involuntary exposure to environmental tobacco smoke in indoor areas open to the public, except for those covered by Health-General Article, §24-205, Annotated Code of Maryland.

B. Nothing in this chapter preempts a county or municipal government from enacting and enforcing more stringent measures to protect the public from involuntary exposure to environmental tobacco smoke in indoor areas open to the public.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) “Act” means the Clean Indoor Air Act of 2007, Health-General Article, Title 24, Subtitle 5, Annotated Code of Maryland.

(2) “Club” means a club as defined in Article 2B, §1-102(a)(4), Annotated Code of Maryland.

(3) “Day care transportation” means the use of a vehicle owned, operated, or contracted for by a licensed day care facility to transport the facility's clients.

(4) “Department” means the Maryland Department of Health and Mental Hygiene.

(5) “Environmental tobacco smoke” means the:

(a) Complex mixture formed from the escaping smoke of a burning tobacco product; or

(b) Smoke exhaled by a smoker.

(6) “Establishment” means a single physical location where business is conducted or where services are performed.

(7) “Health care transportation” means transportation of patients for medical care in a vehicle owned, operated, or contracted for by a licensed health care facility.

(8) “Health officer” means the health officer of each of the 23 counties and the Commissioner of Health in Baltimore City, the duly designated representative of the health officer, or both.

(9) “Indoor area” means all space in a structure or building with a ceiling that is enclosed on all sides by any combination of permanent or temporary walls, windows, or doorways, whether open or closed, or other physical barriers extending from floor to the ceiling.

(10) “Indoor area open to the public” means:

(a) An indoor area or a portion of an indoor area accessible to the public by either invitation or permission; or

(b) An indoor area of an establishment licensed or permitted under Article 2B, Annotated Code of Maryland, for the sale or possession of alcoholic beverages.

(11) "Owner" means an individual or entity having an ownership interest in an establishment or vehicle.

(12) "Person in charge" means an owner, operator, manager, or other person who controls, governs, or directs the activities of an establishment.

(13) "Public transportation of children" means the transportation of children in a vehicle owned, operated, or contracted for by a government entity or a private educational institution.

(14) "Secretary" means the Secretary of Health and Mental Hygiene or the Secretary's designee.

(15) "Smoking" means the burning of a lighted cigarette, cigar, pipe, or another matter or substance that contains tobacco.

(16) "Tobacco-containing product" includes bidis, cigarettes, cigars, cigarillos, kreteks, pipes, or another product or device that contains tobacco.

.03 Exclusions.

This chapter does not apply to:

A. Private homes and residences, including a residence used as a business or place of employment, unless being used by a person who is licensed or registered under Family Law Article, Title 5, Subtitle 5, Annotated Code of Maryland, to provide day care or child care;

B. Private vehicles, unless being used:

(1) For the public transportation of children; or

(2) As part of health care or day care transportation;

C. A hotel or motel room rented to one or more guests, if the total percent of hotel or motel rooms being rented where smoking is allowed, does not exceed 25 percent of the guest rooms in the hotel or motel;

D. A retail tobacco business that is a sole proprietorship, limited liability company, corporation, partnership, or other enterprise, in which:

(1) The primary activity is the retail sale of tobacco-containing products and accessories; and

(2) The sale of other products is incidental;

E. A facility of a manufacturer, importer, wholesaler, or distributor of tobacco-containing products or a tobacco leaf dealer or processor in which employees of the manufacturer, importer, wholesaler, distributor, or processor work or congregate; and

F. A research or educational laboratory in which smoking is conducted as a part of scientific research into:

(1) The health effects of tobacco smoke; or

(2) The ability of a cigarette to meet fire safety standards.

.04 Prohibition of Smoking.

Except as provided in Regulation .03 of this chapter, an individual may not smoke in:

A. An indoor area open to the public;

B. An indoor place in which a meeting is open to the public in accordance with State Government Article, Title 10, Subtitle 5, Annotated Code of Maryland;

C. An indoor place of employment;

D. A government-owned or government-operated means of mass transportation, including:

(1) Buses;

(2) Vans;

(3) Trains;

(4) Taxicabs; and

(5) Limousines;

E. A private home or residence that is being used by a person who is licensed or registered under Family Law Article, Title 5, Subtitle 5, Annotated Code of Maryland, to provide day care or child care; and

F. A private vehicle while it is being used:

(1) For the public transportation of children; or

(2) As part of health care or day care transportation.

.05 Owner Requirements.

A. The owner of a bar, club as defined in Regulation .02B(2) of this chapter, restaurant, pub, tavern, retail establishment, theater, concert hall, athletic facility, financial service institution, government building, educational institution, museum, or library shall:

(1) Prohibit smoking in an indoor area open to the public; and

(2) Post a sign indicating where smoking is prohibited as set forth in Regulation .06A of this chapter.

B. An owner of a hotel or motel shall:

(1) Prohibit smoking in an indoor area open to the public except where smoking is permitted under Regulation .03C of this chapter; and

(2) Post a sign indicating where smoking is permitted or prohibited, as set forth in Regulation .06B and C of this chapter.

C. An owner of a vehicle listed in Regulation .04A(4) of this chapter shall:

(1) Prohibit smoking in the vehicle; and

(2) Post a sign indicating where smoking is prohibited as set forth in Regulation .06D of this chapter.

D. An owner of an establishment containing an indoor area open to the public not listed in Regulation .05A—C of this chapter shall prohibit smoking in an indoor area open to the public.

.06 Posting of Signs.

A. An indoor area open to the public and every public entrance to an indoor area open to the public where smoking is prohibited under Regulation .05A of this chapter shall display conspicuously a “NO SMOKING” sign that conforms to the requirements of Regulation .06E of this chapter.

B. A hotel or motel room in which smoking is permitted shall display a sign containing the words “SMOKING PERMITTED IN THIS ROOM” conforming to the following requirements:

(1) The words “SMOKING PERMITTED IN THIS ROOM” are in capital letters;

(2) The background and the print are in contrasting colors; and

(3) The letters “SMOKING PERMITTED IN THIS ROOM” on the sign are a minimum of 1 inch in height.

C. An indoor area open to the public and every public entrance to an indoor area open to the public where smoking is prohibited in a hotel or motel shall display conspicuously a “NO SMOKING” sign that conforms to the requirements of Regulation .06E of this chapter.

D. A vehicle where smoking is prohibited under Regulation .04A(4) of this chapter shall display conspicuously a “NO SMOKING” sign that conforms to the requirements of Regulation .06E of this chapter.

E. A “NO SMOKING” sign:

(1) Shall contain:

(a) The words “NO SMOKING”;

(b) The international symbol for “No Smoking”, consisting of a pictorial representation of a burning cigarette enclosed in a circle with a bar across the circle; or

(c) A combination of the words “NO SMOKING” and the international symbol for “No Smoking”; and

(2) May contain additional information, such as:

(a) The words, “For information on quitting smoking, call 1-800-QUIT NOW (1-800-784-8669)”; or

(b) The words “WARNING: TOBACCO SMOKE CAUSES CANCER AND HEART DISEASE AND CAN HARM YOUR CHILD.”

F. The owner or person in charge shall ensure that a sign required under this regulation is conspicuously posted and in good condition.

.07 Complaints and Investigations.

A. A person may register a complaint of a violation of a requirement of this chapter by means of:

- (1) A written complaint to the health officer in the jurisdiction where the alleged violation took place; or*
- (2) A telephone complaint to the health officer in the jurisdiction where the alleged violation took place.*

B. The Department shall make available a complaint form at the Department's website and at a local health department.

C. Upon receipt of a complaint, the health officer or the health officer's designee shall:

- (1) Record the complaint on the complaint form; and*
- (2) Investigate the complaint.*

.08 Enforcement.

A. A health officer or the health officer's designee may investigate conditions relative to the enforcement of this chapter.

B. The person in charge of an establishment shall permit a health officer or health officer's designee to enter an establishment during its business hours for the purpose of determining compliance with this chapter.

C. When an investigation is made, the health officer or the health officer's designee shall:

- (1) Document:*
 - (a) The result of the investigation on a report form provided by the Department; and*
 - (b) A condition found that is in violation of the provisions of this chapter;*
- (2) Furnish one copy of the report form to the person in charge of the establishment; and*
- (3) Make the completed report form available for public disclosure in accordance with State Government Article, §10-611—10-628, Annotated Code of Maryland.*

.09 Violations and Certification of Correction.

A. The health officer or the health officer's designee shall notify the owner of an establishment found in violation of a provision of this chapter or the Act:

- (1) By certified mail, return receipt requested, bearing a postmark from the United States Postal Service;*
- (2) Of the specific finding and the penalty for the violation as set forth in Regulation .10 of this chapter;*
- (3) Of a specific date by which the owner shall correct the violation;*

(4) That if the owner fails to correct the violation by the date specified, or is in violation of another provision of this chapter or the Act at another time, the Secretary may impose a subsequent penalty as set forth in Regulation .10 of this chapter; and

(5) That the owner is entitled to request a hearing under Regulation .11 of this chapter on a violation and penalty, as set forth in Regulation .10 of this chapter.

B. The owner of an establishment shall submit to the health officer a certification of correction within a time frame provided by the local health department that:

(1) Lists a violation; and

(2) Includes a description of how the correction was accomplished.

.10 Penalties.

A. A person who violates a provision of this chapter is subject to the following penalties:

(1) A written reprimand by the Secretary for the first violation;

(2) A civil penalty of \$100 for a second violation;

(3) A civil penalty of \$500 for the third violation; and

(4) A civil penalty of \$1,000 per violation for each subsequent finding of violation.

B. The Department shall pay a penalty collected under this regulation to the Cigarette Restitution Fund established under State Finance and Procurement Article, §7-317, Annotated Code of Maryland.

.11 Request for Hearing.

A. In order to preserve a right to a hearing on a violation and penalty of this chapter, a person shall submit a written request to the Department for a hearing, if a hearing is desired, within 10 days of receipt of the notice of violation and penalty.

B. In accordance with the Administrative Procedure Act, State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, the Secretary shall provide for a hearing on the violation by referring the matter to the Office of Administrative Hearings.

C. The Office of Administrative Hearings shall:

(1) Schedule and conduct the hearing on the violation; and

(2) Render a decision and notify the parties of the decision within 30 days after the hearing.

.12 Waivers.

A. A person may apply to the health officer for a waiver from the application of a specific provision of this chapter.

B. The Department shall provide a waiver application on the Department's website.

C. An applicant for a waiver shall establish that:

(1) Compliance with a specific provision of this regulation would cause undue financial hardship, as defined in §§D and E of this regulation; or

(2) The existence of other factors would render compliance with this chapter unreasonable.

D. Except as provided in §E of this regulation, an undue financial hardship may be found to exist, based on:

(1) An establishment's demonstration that:

(a) A reduction occurred of at least 15 percent in gross sales from the sale of food and beverages for a period of 2 consecutive months during which the establishment has operated smoke-free compared to the combined average of gross sales from the sale of food and beverages during the same 2 consecutive month period in the 2 years immediately before smoke-free operation; and

(b) The establishment's purported reduction in gross sales from the sale of food and beverages has occurred under similar operational conditions, other than the presence of a smoke-free environment, and is not due to other factors; or

(2) An establishment's demonstration that the owner is unable to recover the costs associated with a capital improvement project that was initiated before May 17, 2007, that was designed to provide a partial smoke-free environment at the facility.

E. If an establishment has not operated for a period of 2 years before February 1, 2008, the establishment shall demonstrate the requirement for undue financial hardship as set forth in §D(1) of this regulation by comparing a period of 3 consecutive months during which the establishment has operated smoke-free to the same 3 month period of the previous year or if the establishment was not operating at that time, to the 3 month period immediately preceding February 1, 2008.

F. The applicant for a waiver shall demonstrate how, if a waiver would be granted, the applicant will achieve full compliance with the provisions of the Act and this chapter by January 31, 2011.

G. Within 90 days from the receipt of a completed waiver application, the health officer may grant or deny a waiver to one or more specific provisions of this chapter, based on the criteria set forth in this regulation.

H. In granting a waiver, the health officer shall specify:

(1) The actions the applicant shall take that will result in the applicant's achievement of full compliance with the provisions of this chapter by January 31, 2011; and

(2) Any additional requirements to minimize the adverse effects of the waiver on individuals involuntarily exposed to secondhand smoke.

I. A person may not apply for a waiver after January 31, 2011.

J. A health officer may not grant a waiver after January 31, 2011.

K. A person may appeal a health officer's waiver denial in the same manner and subject to the same provisions provided for a violation and a penalty in Regulation .11 of this chapter.

JOHN M. COLMERS
Secretary of Health and Mental Hygiene